S.B. Civil Misc. Appeal No.973/2001

Arvind
vs
Rama & Ors.

DATE OF ORDER : - 8.10.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.Manish Pitalia, for the appellant.
Mr.D.R.Gurjar, for the respondents.

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Heard learned counsel for the appellant as well as learned counsel for the claimants on stay petition. The appellant is seeking stay of the execution of the award, which is in favour of the claimants.

According to learned counsel for the appellant the registered owner of the vehicle, tractor and trolley was Ganesh Ram Jat. There is no even remote connection of the appellant with said vehicle. Despite this, the tribunal passed the award against the appellant.

According to learned counsel for the appellant, the tribunal misread the power of attorney Ex.13. The tribunal by misreading the power of attorney, on the basis of power of attorney only held that appellant is liable to pay the

compensation amount as he was in possession of the tractor and trolley at the time of accident whereass Ex.13, power of attorney was given to the appellant after the accident, that too, for getting the vehicle released from the court only. Learned counsel for the appellant further submits that there is no evidence available on record in support of the transfer of the said tractor and trolley to appellant's father Sumerchand, still the tribunal held that the vehicle was purchased by appellant's father Sumerchand. He further submits that Sumerchand expired during the pendency of the claim petition and his name was deleted from the array of the parties without impleading any legal representatives of the said Sumerchand. Therefore, also, the appellant cannot be held liable. It is further submitted that registered owner of the vehicle can be held liable for the compensation in such situation.

It appears from the reasons given in the award itself that after the accident, police recorded statement of the appellant Arvind under Section 161Cr.P.C, copy of which is placed on record as Ex.10. The police, while investigating the matter, gave a notice under Section 133 of the Motor Vehicles Act to appellant's father Sumerchand and in reply to that, said Sumerchand informed that Sarif Mohd. was the driver of the vehicle. The power of attorney, though appears to have been executed after the accident by the registered owner of the vehicle, but admittedly, the appellant himself got the

vehicle released.

Learned counsel for the appellant could not explain all these events, which connects the appellant with the vehicle in question indicating his complete control over the vehicle in the light of the reasons given by the tribunal. The non-impleading of the legal representatives of the deceased Sumerchand was not found fatal in view of the fact that Sumerchand's son appellant himself was party and when one of the legal representatives of deceased was already on record and the tribunal has not dismissed the claim as abated, naturally because of this fact that one of the legal representative and who was in possession of the vehicle at the time of accident, the tribunal has not committed any illegality.

In the totality of the facts, it cannot be said that appellant cannot have any liability. Even if it is accepted that the registered owner shall also be liable for the compensation even then there is no reason for holding that the person, who is ostensible owner and the person, who was in total control of the vehicle at the time of accident can have lessor responsibility to pay the compensation. In view of the above, I do not find any merit in the entire appeal.

So far as factual aspect is concerned, there are two sets of evidence. One is for the stand taken by the appellant and another for the stand taken by the claimants. Appellant relied upon his oral statement and alleged lacuna in the evidence produced by the claimants. There are statement of the appellant himself recorded under Section 161 Cr.P.C., thought he denied the statement when confronted with the said statement. But there appears to be no reason to discard the reply given by the appellant's father in response to the notice under Section 133 of the Motor Vehicles Act. Circumstantial evidence clearly connect the appellant and his father with the vehicle in question as well as with the accident itself.

In case where the power of attorney says that he has been given limited power under the power of attorney and when he is facing same allegations that he acted power of attorney because of the reasons, which are not mentioned in the power of attorney then it is for the power of attorney holder to explain why the power of attorney was given to him. A bare perusal of the facts of the case and the power of attorney reveals that the registered owner Ganesh Ram Jat gave reasons for giving power of attorney and those reasons are that he is busy in his business, but why it was accepted by the appellant Arvind Agarwal, who was doing the business of sweets only, there is reasons given in the Ex.13. There is no explanation why he volunteer his service. It may not be necessary

in some cases to give reasons for becoming powr of attorney, but here in this case, the very nature of the dispute necessarily demanded from the power of attorney holder to explain the reasons for accepting the power of attorney, particularly when, the power of attorney holder was a businessman then how and why he undertook to get the vehicle released from the court in a criminal proceedings.

In view of the above, if a reasonable inference has been drawn by the tribunal holding that the vehicle, in fact, was purchased by Sumerchand and at relevant time was in control of the appellant then liability of the owner as well as Sumerchand is joint and several. In a matter of joint and several liability, the claimants can recover entire amount from anyone of them. Since the appellant, though was not owner of the vehicle, but the tribunal found that the vehicle was in his control and driven as per his instructions, therefore, he is also liable to the amount as the accident was caused when vehicle was in his control. Apart from his personal liability, he is liable as legal representative of Sumerchand also and in that situation upto the extent of the property, which he received from Sumerchand only, but when he is personally liable as held above, then he is liable for the total amount also.

In view of the above, the appeal of the appellant has no merit and the

same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-